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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TK POWER, INC.

Plaintiff,

v.

TEXTRON, INC.

Defendant.

Case No. C-04-5098 EMC

Judge: Hon. Edward M. Chen

**STIPULATION AND [PROPOSED]
ORDER AMENDING FIRST AMENDED
CASE MANAGEMENT AND PRETRIAL
ORDER FOR JURY TRIAL**

TEXTRON INC., a Delaware Corporation,

Counterclaimant,

v.

TK POWER, INC., a Nevada Corporation,

Counterdefendant.

Trial Date: May 8, 2006

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN ALL
PARTIES IN THE ABOVE-ENTITLED ACTION through their respective counsel of record
as follows:

WHEREAS the Court entered the Amended Case Management and Pretrial Order for
Jury Trial on December 9, 2005 (Document No. 81);

AND WHEREAS the Court set a discovery cut-off date with respect to all non-expert
discovery of January 31, 2006;

STIPULATION AND [PROPOSED] ORDER

1 **AND WHEREAS** the Court set a discovery cut-off date with respect to expert disclosure
2 and Rule 26 reports of February 6, 2006;

3 **AND WHEREAS** the percipient witness deposition of non-party Michael Bourke shall
4 occur on January 6, 2006, by agreement of the parties, based on the fact that Textron unilaterally
5 cancelled the deposition previously scheduled by TK Power, Inc. for December 8, 2005 because
6 of the substitution of counsel;

7 **AND WHEREAS** TK Power desires to reserve the right to propound written discovery
8 solely limited to issues raised in the Bourke deposition, based on the fact that Textron
9 unilaterally cancelled the previously scheduled deposition set to occur 21 days prior to the cutoff
10 for service by TK Power of written discovery requests, and which discovery would be served by
11 email and regular mail no later than January 10, 2006;

12 **AND WHEREAS**, Textron desires to reserve any and all objections to such yet-to-be
13 propounded written discovery other than timeliness objections;

14 **AND WHEREAS**, the parties stipulate that responses to any written discovery served by
15 email and regular mail on January 10, 2006, would be due to be served on February 9, 2006;

16 **AND WHEREAS**, the parties agree that extending the date to disclose experts and
17 rebuttal experts and Rule 26 reports would be beneficial;

18 **IT IS HEREBY AGREED AND STIPULATED** by and between the parties, through
19 their respective counsel, that the December 9, 2005 First Amended Case Management and
20 Pretrial Order For Jury Trial be amended as follows:

21 1. "All non-expert discovery shall be completed by January 31, 2006, save and
22 except for written discovery propounded by TK Power, Inc. solely limited to issues raised in the
23 deposition of non-party Michael Bourke, which deposition is noticed for January 6, 2006, and
24 which written discovery shall be completed by February 9, 2006, and with defendant reserving
25 the right to assert objections other than timeliness, as appropriate under the Federal Rules of
26 Civil Procedure, to such yet-to-be propounded written discovery" (paragraph 2.a.);

27 2. "Experts shall be disclosed and reports provided by plaintiff and defendant by
28 February 16, 2006" (paragraph 2.c.);

1 3. "Rebuttal experts shall be disclosed and reports provided by March 2, 2006"
2 (paragraph 2.d.);

3 4. "All discovery from experts shall be completed by March 16, 2006" (paragraph
4 2.e).

5 **IT IS SO STIPULATED.**

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7 DATED: ~~December~~ January 3, 2006

TUCKER ELLIS & WEST LLP

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10 By: 

Peter J. Koenig
Attorneys for Defendant and
Counterclaimant E-Z-GO, a division of
TEXTRON, INC.

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12 DATED: December 29, 2005

CORNERSTONE LAW GROUP

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15 BY: 

John C. Brown
Attorneys for Plaintiff and
Counterdefendant TK POWER, INC.

ORDER

Pursuant to foregoing stipulation, IT IS SO ORDERED. All other dates remain the same.

DATED: January 4, 2006

By:

